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# Refugee Reports

A News Service of the U.S. Committee for Refugees
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## BOARD OF IMMIGRATION APPEALS TAKES NARROW VIEW OF "PERSECUTION" IN CONTEXT OF CIVIL WAR

A reasonable person may have a "well-founded fear" of the harm that may befall him if returned to his home country, especially a country embroiled in civil war, such as El Salvador. But is that harm, even if directed against him personally, "persecution"? This is the question currently being considered by the federal Board of Immigration Appeals, the highest administrative level of appeal for asylum cases.

A "well-founded fear of persecution" is the legal standard for establishing an asylum claim. In its landmark Cardoza-Fonseca decision in 1987, the Supreme Court clarified the phrase "well-founded fear." But the Supreme Court did not pay particular attention to the word "persecution." Now, the federal Board of Immigration Appeals (BIA) has issued a series of recent decisions suggesting a narrowing interpretation of "persecution" that, in effect, creates a more difficult standard to establish an asylum claim, especially in the context of civil war.

Several key decisions involve Salvadoran asylum claims. Persons thrust into participation on either side of the Salvadoran civil war, even against their will, and even if they consciously fled the conflict and still fear for their safety, are now less likely to find asylum in the United States, following these BIA decisions.

In the context of civil war, the BIA ruled, to be endangered for being a policeman or a guerrilla is not, by itself, sufficient ground to establish a well-founded fear of persecution. A case involving a former member of the national police from El Salvador, Matter of Fuentes, and another involving a man forced to join the guerrillas, Matter of Maldonaldo-Cruz, are two sides of a coin.

"A threat to harm or kill a deserter from a guerrilla organization operating in a country does not constitute persecution," said the BIA in Maldonaldo-Cruz. In Fuentes, it determined that "dangers faced by policemen as a result of that status alone are not ones faced on account of race, religion, nationality, membership in a particular social group, or political opinion" --the legal grounds for conferring asylum.

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Those dangers arise, said the Board, "from the nature of their employment and domestic unrest rather than 'on account of' immutable characteristics or beliefs."

Fuentes, a 33-year-old, who had been in the national police since the age of 12, said that the government was unable to protect him and that he fled El Salvador to avoid being killed. He testified that many people from his hometown had joined the guerrillas, that they knew him by name, knew he was a member of the national police, and had threatened him personally.

The BIA noted that "violence appears inherent to such revolutionary struggles," so that if the United States were to determine that combatants in a guerrilla war could be considered as victims of persecution, then it would follow that the attackers on the other side were engaged in persecution. "Virtually all participants on either side of an armed struggle could be characterized as 'persecutors' and would thereby be ineligible for asylum or withholding of deportation."

On the other hand, the BIA did determine that being a former policeman is an "immutable characteristic," and could, therefore, lead to persecution on account of political opinion or membership in a particular social group. However, the BIA found that Fuentes had not "clearly developed" the reasons for his fear, in part, because "the evidence the respondent presents is directed to so local an area of his country of nationality."

"Although the respondent expressed a general fear of returning to El Salvador," the BIA stated, "his specific evidence focuses on the danger he would face if he returned to his hometown, where he is known by the guerrillas and the conflict is still ongoing."

**Threats and Violence Not Persecution in Civil War Context** Similar assumptions colored the BIA's ruling in the case of the former guerrilla. "Historically, civil wars or revolutions have always contained strong currents of violence, threats, destruction, intimidation, and indeed ruthlessness," noted the BIA in Maldonaldo Cruz. "Individuals harmed by such violence or threats of harm in a civil war are not necessarily persecuted 'on account of' the five categories enumerated in...the Act."

Maldonaldo-Cruz had been forcibly recruited into the guerrillas and then escaped. His claim for asylum was based on his fear of persecution at the hands of either the guerrillas or the government. The BIA said that it was not interested in determining whether or not he was in danger, "but whether the harm the respondent fears is on account of 'political opinion'."

The Board reasoned that a person could succeed in showing that he had a well-founded fear of being harmed, but that such a well-founded fear would not necessarily lead to a grant of asylum if the cause of danger was "over purely personal matters or those fleeing general conditions of violence and upheaval."

The BIA said that its analysis hinged to a certain extent "on assumptions one may have concerning the nature of the guerrillas' struggle occurring in El Salvador and on the nature of guerrilla struggles in general." It went on to say that the guerrillas "must impose discipline" and that an important tool of discipline "is the punishment of deserters."

Although the reasoning of the two cases is parallel in many respects, there is no intimation in Maldonaldo-Cruz that being a "former guerrilla" is an immutable characteristic for which a person--such as the former policeman in Fuentes--could be subject to persecution.

**"Political Offense" Exception to Extradition Suggests Violence in Furtherance of Civil War May Not Be Persecution** One BIA member, Michael J. Heilman, wrote a separate concurring opinion in Matter of Maldonaldo-Cruz in which he suggested that the "political offense" exception in extradition law could be applied in these cases. Heilman criticized what he perceives as a "drift in the adjudication of asylum cases toward a simple and superficial risk analysis, in which the disposition of claims has depended entirely upon whether the applicant has presented a convincing case that he might be harmed if he returned to his native land."

Instead, Heilman proposed using the standard applied in the "political offense" exception to extradition, which determines that acts, however violent, committed in the furtherance of objectives in civil war or rebellion, if intrinsically related to the struggle, are not based on a desire to persecute. "If...the threatened act would

## COURT REVERSES BIA INTERPRETATION OF "REFUGEE"

The U.S. District Court for the Southern District of New York recently reversed a BIA denial of asylum in the case of a man involved in a coup attempt against the government of Ghana. "The decision of the BIA must be reversed as a matter of law," wrote Judge Kimba M. Wood, "because the BIA's interpretation of the definition of 'refugee' contravenes the intent of Congress as reflected in the [Refugee] Act [of 1980] and in the Act's legislative history."

Nana Asante Dwomoh, a sergeant in the Ghanaian army, supported a coup against the military government of Ghana. The morning before the coup was to take place, he was arrested, beaten, and imprisoned for a year. After escaping from prison, he fled to the United States. In stating the facts of the case, the court observed, "There is every indication that, if returned to Ghana, Mr. Dwomoh will again be physically abused and possibly may be executed."

The BIA upheld an immigration judge's denial of asylum on the basis that the acts Dwomoh engaged in did not qualify him as a "refugee." The BIA determined Dwomoh to be "a fugitive from justice who faces prosecution for his role in an unsuccessful coup d'etat."

On the question of whether the beatings and one year's detention of Dwomoh without permitting him contact with the outside world constitute "persecution on account of...political opinion," the BIA stated, "he was subjected to mistreatment due to his refusal to provide information about the attempted coup d'etat, not because of any political view he may hold."

The BIA compared Ghana to the United States, saying that both countries have the right to enforce their laws against treason and insurrection, even by imposition of the death penalty.

Judge Wood pointed out that Ghana, unlike the United States, has no procedure for peaceful change of government, so that "a coup may be the only means by which political change can be effected."

Wood observed, "No United States citizen is punished for treason without a formal charge, and the opportunity for a full trial and appeal. Mr. Dwomoh has no such protections; he might be executed without ever having been charged, no less tried."

In response to the BIA position that Dwomoh had not expressed political opinions critical of the Ghanaian regime prior to the coup attempt, and that "he is not facing prosecution for his political views but rather for the...act of trying to overthrow the Government of Ghana," the district court found that "the BIA ignored the reality that in certain countries individuals who express opposition to the government are jailed, and in certain countries, an attempted coup is the only way to change the government." Judge Wood continued, "In such a country, a person desirous of changing the government would be ill advised to express his opposition publicly before attempting a coup. In that context, his political expression is embodied in his political act."

The court determined that a coup attempt is a form of expression of political opinion within the statutory definition of "refugee" in countries where no procedures exist for peacefully changing governments, and where those who express views critical of the government can be arrested and held incommunicado for long periods.

"When a participant in an attempted coup has been beaten or tortured during detention, there is no doubt that he is being persecuted on account of his political opinion," Judge Wood opined.

On October 13, Judge Wood reversed the BIA decision and remanded the case to the BIA for any additional findings of fact and the application of the appropriate definition of "refugee." Noting that Dwomoh is presently incarcerated, and has been detained for more than 650 days, the court directed the BIA to move for expedited consideration of the case.

come within the 'political offense' exception to extradition," Heilman wrote, "then there is powerful reason to find that the threatened act does not constitute persecution."

**Bar to "Persecutors" Loosened in Context of Civil War** As a corollary to this thinking, the BIA is finding less ground for determining an asylum applicant to be ineligible for asylum on the grounds that he or she engaged in the persecution of others. In the past, the government has argued that a person's membership in a revolutionary group, such as the Iranian Mujahedin, makes them ineligible for consideration for a grant of asylum because they may have "ordered, incited, assisted, or otherwise participated" in the persecution of any person. The government has consistently argued that the burden of proof is on the applicant to show that he hasn't participated in such persecution.

In another recent case, however, Matter of Rodriguez-Majano, the BIA remanded a case to an immigration judge who had ruled a Salvadoran ineligible for asylum for having assisted in persecution.

Rodriguez-Majano testified that he was forced to join the guerrillas, but deserted after having served with them for a two-month period. He testified that shortly after his desertion from the guerrilla forces, he was arrested by the police, interrogated, beaten, and tortured with electric shocks. He expressed a fear of persecution both at the hands of the government and the guerrillas.

In this case, the only issue before the BIA was whether the immigration judge correctly ruled that the alien was ineligible for asylum for having engaged in the persecution of others during his brief stint with the guerrillas. The BIA found that "mere membership in an organization, even one which engages in persecution, is not sufficient to bar one from relief, but only if one's action or inaction furthers that persecution in some way. It is the objective effect of an alien's actions which is controlling." Continuing the line of reasoning in the other recent cases before it, the BIA said, "Harm which may result incidentally from behavior directed at another goal, the overthrow of a government or, alternatively, the defense of that government against an opponent, is not persecution. In analyzing a claim of persecution in the context of a civil war, one must examine the motivation of the group threatening harm."

The case has been remanded to the immigration judge, and now must be considered on the merits of the claim to a well-founded fear of persecution. Given the similarity to Matter of Maldonaldo, Rodriquez-Majano is likely to have an uphill battle to establish that the threats to his life and freedom, coming as they do in the context of the civil war, will be "persecution" to the satisfaction of an immigration judge or the BIA.

**BIA Takes Narrower View of 'Persecution', 'Political Opinion'** These recent decisions continue a settling back of sediment following the the Supreme Court's stirring up of the mud in its historic Cardoza-Fonseca decision in March 1987 which decisively rejected the BIA position that a "well-founded fear" was not meaningfully different from a "clear probability" of persecution (see Refugee Reports, Vol. VIII, No. 3). By finding, on the contrary, that the test of a well-founded fear is a "reasonable possibility" of persecution, the Supreme Court established an easier standard for asylum applicants to meet. Following the Supreme Court's opinion, the BIA reinterpreted the well-founded fear of persecution standard in Matter of Mogharrabi to mean what a reasonable person would fear in the same circumstances as the asylum applicant if returned to his or her country, even though the likelihood of persecution could be significantly less than clearly probable (see Refugee Reports, Vol. VIII, No. 7).

But the Supreme Court left an opening for more narrow interpretations in Cardoza-Fonseca by its own failure to define more precisely the key phrase "well-founded fear of persecution," saying that it "can only be given concrete meaning through a process of case-by-case adjudication." So, as early as Mogharrabi, the BIA was quick to point out that aliens who establish a well-founded fear of persecution would not necessarily be granted asylum unless they could establish that the persecution was based on one of the five enumerated grounds, and that "aliens fearing retribution over purely personal matters, or aliens fleeing general

conditions of violence and upheaval in their countries, would not qualify for asylum."

According to Deborah Anker, a lecturer in immigration law at Harvard Law School and co-chair of the refugee and asylum committee of the American Immigration Lawyers Association (AILA), "In recent months the Board has based most denials on a narrowing interpretation of the meaning of political opinion and persecution."

She said that the BIA's tendency is to focus on individual actions and motivations in isolation from their political context. Anker cites another case, Desir v. INS, in which the BIA characterized beatings, imprisonment, and assault by Haitian Ton Ton Macoutes for purposes of extortion as a personal conflict. The Ninth Circuit Court of Appeals overruled the BIA saying, "the Haitian government under Duvalier operated as a 'kleptocracy, or government by thievery, from the highest to the lowest level. The Ton Ton Macoutes...formed the heart of the system.... Because the Macoutes are an organization created for political purposes, they bring politics to the villages of Haiti. To challenge the extortion by which the Macoutes exist, is to challenge the underpinnings of the political system."

**Federal Court Differs With BIA on Applying New Asylum Standard** It is not surprising that the Ninth Circuit overruled the BIA in this case. In fact, the Ninth Circuit has repeatedly differed with the Board in its interpretations of persecution and political opinion. In another case involving a Salvadoran fearing persecution at the hands of guerrillas who had forcibly tried to recruit him, Arteaga v. INS, the Ninth Circuit chided the BIA for paying mere "lip service" to the Supreme Court's Cardoza-Fonseca ruling, saying, "the BIA decision here fails to make explicit the more generous standard." (See Refugee Reports, Vol. IX, No. 4.)

In returning the case to the BIA and directing it to apply the more generous standard, the Ninth Circuit said, "A specific verbal threat by the guerrillas directed at an individual whose identity and residence are known to the guerrillas is sufficient to create a well-founded fear."

While the Ninth Circuit also recognized in Bolanos-Hernandez v. INS that neutrality in the face of forced recruitment from either side in a civil war situation like El Salvador constitutes political opinion for which a reasonable person could have a well-founded fear of persecution, the BIA seems to disagree.

In Matter of Fuentes the BIA explicitly stated that it will not apply the rulings of the Ninth Circuit outside its jurisdiction. "We do not find it appropriate to apply the Ninth Circuit's decision in that case [Bolanos-Hernandez] in the Fifth Circuit where this case [Fuentes] arises. We know of no Fifth Circuit case which agrees with the rationale of Bolanos-Hernandez."

**Does Civil War Require a Higher Standard of Persecution?** The editors of the immigration law weekly, Interpreter Releases, commented that the BIA found no persecution in the Fuentes case because of the overall level of violence in El Salvador.

"This is a rehash of the Acosta and Sanchez and Escobar paradox," said the editors, "the higher the actual danger of death, violence and terror, the lower the chance of proving fear of persecution, according to the Board, because it is harder to show a person is 'singled out' for persecution." (See Refugee Reports, Vol. VII, No. 11 and Vol. VIII, No. 7 for the Acosta and Sanchez and Escobar cases.)

Interpreter Releases went on to comment that the BIA reasoned in Fuentes "almost as if Cardoza-Fonseca and Matter of Mogharrabi had not been decided in the interim."

Not only do these situations suggest a higher standard for asylum seekers to meet, but also have the effect of lowering the standards the international community has come to expect of governments in the observance of human rights.

"As long as the BIA can say that a government has a legitimate national security interest, it is ready to excuse almost any conduct," said Carol Wolchok, director of the Immigration Law Implementation Project of the American Bar Association (ABA). Wolchok said this approach undermines the idea that governments should act within established limits. "It becomes legitimate in the context of a military situation for governments to kill opponents, to ignore totally due process before detaining, interrogating, and punishing."

**Court Overturns BIA on Salvadoran Draft Evader Refusing to Serve in Army that Commits Atrocities** Recently, the U.S. Court of Appeals for the Fourth Circuit directly addressed the issue of human rights violations in the context of civil war in a case involving a man who fled El Salvador in order to avoid serving in an army which he termed cruel and unjust.

The case, M.A. v. INS, involves the appeal of the BIA's denial of a Salvadoran's motion to reopen a deportation proceeding to raise an asylum claim. M.A. (initials were used, at his lawyer's request, to preserve his anonymity) fled El Salvador in 1982 to evade conscription in the Salvadoran military, citing atrocities committed by the army and the consequences he might suffer for his failure to serve.

The BIA denied M.A.'s motion to reopen his hearing, saying that he had not presented evidence to show the likelihood of persecution based solely on his failure to serve in the military, or to show that "his predicament is appreciably different from the danger facing all the population."

M.A.'s case was complicated by the fact of his draft evasion, since conscription is a generally recognized right of governments, and draft evasion is usually looked upon as a legitimate matter for prosecution, not persecution. A draft evader is only considered to be a refugee when the nation's enforcement of its laws against evasion of military service are disproportionately severe to the point of persecution, or when the military of the government in question commits acts condemned by the international community.

The BIA rejected M.A.'s claim that he would be forced to associate with a military force that commits internationally condemned acts, because he had not shown that he personally would be required to engage in such inhuman conduct in his military service and that there has been no official condemnation of the Salvadoran military or government.

The Fourth Circuit said the BIA was wrong to require M.A. to wait for international bodies, such as the United Nations, to condemn El Salvador for atrocities committed by its army. "The Geneva Conventions of August 12, 1949 represent the international consensus regarding minimum standards of conduct during wartime. They include the following, as to all of which M.A. has presented evidence to show their contravention by the Salvadoran military: the obligation to treat humanely persons taking no active part in hostilities, and the prohibition of certain acts, including violence to life and person, specifically murder of all kinds, mutilation, cruel treatment, and torture; and the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court."

**BIA's Standard Too Harsh, Says Fourth Circuit** The Fourth Circuit observed, "We think the Board has made the petitioner's burden unduly harsh. An applicant for asylum should not be required to prove that he would be compelled to commit atrocities. It is unlikely that such a standard could ever be met."

The Fourth Circuit then observed that atrocities are more likely to occur in civil war situations. "Whether an individual will be associated with condemned conduct will depend largely on how widespread it has become, and it follows that the likelihood that an individual would be forced to participate in atrocities increases as the atrocities become more widespread. We therefore think that the appropriate inquiry is to consider the pervasiveness of atrocities. We think also that petitioner has presented evidence from a wide variety of sources to show that atrocities committed against the civilian population by the military are frequent and widespread."

**BIA Decisions Tilt Against Salvadorans, Critics Suggest** The Fourth Circuit also pointed out that the BIA appeared to treat M.A., a Salvadoran draft evader, more harshly than Afghan draft evaders similarly situated. In Matter of Salim, the BIA determined that an Afghan draft evader had a well-founded fear of persecution if deported to Afghanistan on the ground that Salim was refusing to serve in an army which was not controlled by his own government, but by the Soviet Union. Among other arguments the BIA had found on behalf of Salim was the Soviet practice of "dragooning and forcibly impressing" men and boys into the armed forces. The Fourth Circuit said it had difficulty distinguishing the facts of Salim and M.A. "M.A. has presented evidence which shows

Young boys being forcibly conscripted in El Salvador.
*The Christian Science Monitor/R. Norman Matheny*

that the Salvadoran military engages in lawless impressment of young men, and that it coerces them to commit acts against their fellow citizens which contravene the Geneva Conventions."

Then the Fourth Circuit went to the heart of the charge that BIA decisions with respect to Salvadorans indicate a political bias that Congress had intended to correct in 1980 when it passed the Refugee Act, striking ideological standards from asylum determinations.

"We think it would be contrary to the spirit of the Refugee Act of 1980," wrote the Fourth Circuit, "to distinguish between atrocities committed by domestic forces and those committed by forces under foreign control, much less those under the control of a specific foreign government, e.g., the Soviet Union." The Fourth Circuit specifically cited the section of the Refugee Act requiring the Attorney General "to establish a uniform procedure for passing upon an asylum application," in contrast to the earlier law making asylum available to those fleeing communist-dominated regimes. "Thus a major result of the Refugee Act of 1980," the Fourth Circuit said, "was to eradicate the disparity of treatment based on geography."

Anker suggests that these recent Board decisions "raise long-standing problems concerning disparate standards in asylum adjudication." She said, "The Board found the actions of the Salvadoran government were legitimate without any ruling regarding the human rights record of the Salvadoran government and governmental military and paramilitary forces."

She said, "It purported to make a neutral and general judgment about the legitimacy of governmental action. Yet in other contexts, Iran and Afghanistan, for example, the Board clearly has made judgments regarding the political legitimacy of government and opposition actions."

Wolchok of the ABA also sees evidence of bias against Salvadorans in these decisions. "Why is it that the Salvadoran cases denying asylum get published [thus becoming precedent decisions]?" she asked. Wolchok observed that the BIA has been reluctant to publish decisions in the past, but now "is publishing anything under the sun." She suggested that it will be harder for immigration judges to grant asylum. "When the factual and legal issues are similar, they will have to cite these precedent decisions," she said. "And the Board will be able to go through these cases quickly and affirm denials."

Application of Geneva Convention to Asylum

One of the more interesting features of M.A. is the discussion of the applicability of the Geneva Convention in the U.S. asylum context. The issue was also raised in Matter of Medina, a case recently decided by the BIA, in which it rejected the applicability of the Geneva Convention in an immigration judge's decision whether to withhold deportation.

The case involves a Salvadoran woman who sought withholding of deportation under provisions of the Fourth Geneva Convention, which protects the rights of civilians in time of war. The BIA said that the Fourth Geneva Convention does not refer to repatriation of displaced persons, that it is limited, with one exception, to international armed conflicts, not civil wars, and that using it as a remedy in deportation proceedings would fall outside the jurisdiction of an immigration judge or the BIA.

Although stating that application of the Geneva Convention to protect war refugees from deportation is outside its jurisdiction, the BIA noted that Medina "and those in her situation are not without avenue to the relief sought. In fact, the available approaches have been pursued. Extended voluntary departure for Salvadorans has been sought before the Attorney General and Congress. To date, however, such attempts have not been successful."

Craig Mousin, director of the Midwest Immigrant Rights Center in Chicago, said that the BIA decisions misread the political context for maintaining sovereign authority. "With a country like Guatemala," he said, "a reasonable person would have to question the legitimacy of a sovereign authority that commits such gross violations of human rights." Mousin said, "In low intensity warfare, as currently found in nations from Afghanistan to El Salvador, civilians become the targets for persecution."

# Update

• On October 8, Thai authorities rounded up 135 Burmese students seeking asylum at a Buddhist monastery in the town of Mae Sot and forced them back across the border, according to a report in the Far Eastern Economic Review. The students reportedly joined compatriots at Thi Baw Bo camp, which is run by the Karen National Union, a rebel minority group seeking freedom from the central government in Rangoon.

An estimated 5,000-10,000 Burmese students and other dissidents have fled to the Thai border since September 18, when Gen. Saw Maung seized power in a military takeover and began a crackdown on protesters calling for democratic change. Some entered Thai territory, while many remained on the border to join minority resistance groups--the Mon, Karen, Shan, and Kachin--in their fight against the Rangoon government.

At a September 22 press conference, Thai foreign minister Sitthi Sawetsila said that Burmese asylum seekers would be questioned but would not be pushed back. Rather, he said, they would be allowed to stay in Thailand temporarily until the situation improves in Burma.

Meanwhile, almost 600 Vietnamese boat refugees pushed off from Indonesia have landed in Malaysia during the first nine months of 1988, according to sources in Malaysia. The latest known incident occurred on September 19, when two boatloads totalling 190 people were pushed off from Indonesia near Matak Island. Pushbacks of Laotian and Vietnamese refugees also continue in Thailand, according to sources there. Close to 200 Hmong were pushed back to Laos during a three-day period in July, and more than 2,300 Vietnamese have been pushed off from Thailand since January 1988, the sources revealed.

• More than 800 refugees from the Mesa Grande camp in Honduras repatriated to El Salvador November 6, according to the

Refugee Reports

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**CORRECTION NOTICE:**

A printing error in the October 1988 issue of Refugee Reports resulted in the chart on page 16 not having a title. We apolcgize for that error, and enclose a corrected copy for your use.

U.S. REFUGEE ADMISSIONS, 1975-1989

| | Actual Admissions | | | | | | | | | | | | | Estimated Admissions 1988 | 1989 Ceiling |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1975 | 1976 | 1977 | 1978 | 1979 | 1980 | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | | |
| E. ASIA | 135,000 | 15,000 | 7,000 | 20,574 | 76,521 | 163,799 | 131,139 | 73,522 | 39,408 | 51,960 | 49,970 | 45,454 | 40,112 | 28,000<br>7,000(ODP) | 28,000<br>25,000(ODP) |
| E. EUROPE | 1,947 | 1,756 | 1,755 | 2,245 | 3,393 | 5,025 | 6,704 | 10,780 | 12,083 | 10,285 | 9,350 | 8,713 | 8,606 | 27,000 | 24,500 |
| SOVIET UNION | 6,211 | 7,450 | 8,191 | 10,688 | 24,449 | 28,444 | 13,444 | 2,756 | 1,409 | 715 | 640 | 787 | 3,694 | | |
| LATIN AMERICA | 3,000 | 3,000 | 3,000 | 3,000 | 7,000 | 6,662 | 2,017 | 602 | 668 | 160 | 138 | 173 | 315 | 2,800 | 3,500 |
| AFRICA | 0 | 0 | 0 | 0 | 0 | 955 | 2,119 | 3,326 | 2,648 | 2,747 | 1,953 | 1,315 | 1,994 | 1,500 | 2,000 |
| NEAR EAST/ SOUTH ASIA | 0 | 0 | 0 | 0 | 0 | 2,231 | 3,829 | 6,369 | 5,465 | 5,246 | 5,994 | 5,998 | 10,107 | 8,500 | 7,000 |
| TOTALS | 146,158 | 27,206 | 19,946 | 36,507 | 111,363 | 207,116 | 159,252 | 97,355 | 61,681 | 71,113 | 68,045 | 62,440 | 64,828 | 75,450 | 90,000<br>+ 4,000*<br>94,000 |

*Admissions ceilings since FY 87 have included an unallocated reserve for "contingent refugee admission needs," to be used only after consultation with Congress, and only to the extent that private sector funding is available to support admissions using the reserve.

Source: U.S. Department of State.

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Interfaith Office on Accompaniment. The refugees, traveling in 26 buses and 89 trucks, returned to their homes in Santa Marta in the department of Cabanas. Most had resided in the closed camp in Honduras for the past eight years. This is the third mass repatriation since October 1987 (see Refugee Reports, Vol. VIII, No. 10 and Vol. IX, No. 9), in which a total of more than more than 6,000 refugees have returned. Following this latest repatriation, the population of Mesa Grande has been reduced to 3,752. This leaves 13,286 UNHCR-registered Salvadoran refugees in Honduras, in contrast to the 21,000 Salvadoran refugees registered by UNHCR in 1987.

° Legislation to reauthorize the resettlement provisions of the Refugee Act of 1980 for three years was passed by the House of Representatives on August 8, but was never voted on by the Senate. Although House and Senate conferees had agreed to support the Senate version of the reauthorization bill (S.2605), the measure never reached the Senate floor for a vote.

° On November 1, President Reagan signed into law the Genocide Convention Implementation Act of 1988. The act creates a new federal crime of genocide or attempted genocide for any person who attempts to destroy any national, ethnic, racial, or religious group--in whole or in part--through murder, serious bodily injury, mental or physical torture, prevention of members of the group from having children, or forcible removal of children from the control of any member of the group.

° The Family Support Act of 1988 (PL 100-485), which was enacted on October 13, requires all states to institute JOBS programs by October 1990. The aim of the JOBS program, according to a government official with the Family Support Administration, is to assist long-term, or potential long-term, welfare recipients to find jobs by providing them with education, training, and employment-related services.

Among other provisions, the new welfare reform act requires states to provide 12 months of both transitional child-care assistance and Medicaid benefits for most families who leave public assistance rolls as a result of employment.

"We see no immediate effect" of the law on refugee programs, the official told Refugee Reports, but predicted that the impact would be significant by 1990.

° On October 3, the House defeated a bill (H.R. 5164) that would have given Mariel Cuban detainees the right to a hearing before an administrative law judge to determine whether they can be released from detention, with due process guarantees, including the right to call witnesses, test evidence, and be provided with legal counsel. The bill would also have placed the burden of proof on the government to show by a preponderance of the evidence that the alien, if released, would pose a threat to the community or would violate the conditions of his release. The bill did not address whether or not individual Mariel detainees should be allowed to remain in the United States.

Although the bill had strong bipartisan sponsorship and was passed unanimously by both the Subcommittee on Immigration, Refugees, and International Law and the full Judiciary Committee, it was defeated by a 144-to-271 vote. The defeat was somewhat mysterious, as no one even spoke in opposition to the measure.

° As of October 1, 1988, transportation and visa fees must be paid in advance for all Indochinese entering the United States on immigrant visa petitions, according to the State Department. Payment of these fees is to be made to the Intergovernmental Committee for Migration (ICM), which arranges reduced fare transportation, visas, and medical clearances for Indochinese refugees and immigrants.

No payments should be made in advance of official State Department notification, according to an ICM statement. "Petitioning relatives in the United States will receive written notification from the Department of State when their family members are scheduled for their U.S. interviews and will be informed of the costs, which must be prepaid by certified check or money order," the statement said. The visa fee is currently $150 per person and transportation costs depend on the itinerary.

° The Immigration and Naturalization Service apprehended 940,670 undocumented aliens

on the southern border during FY 88, a 16 percent decrease since 1987, and 42 percent lower than 1986, according to the INS.

# Recent Developments

**CALIFORNIA'S SOUTHEAST ASIANS ENTER THE POLITICAL ARENA**

*[This article was written by Duc Qui Nguyen, a freelance journalist in the San Francisco Bay area. He was assisted by Sara Colm, of the Tenderloin Times.]*

They talk in the lingo of politicians and are familiar with the issues of the day. They show up at politicians' doors--and are received--with regular frequency.

They are the leaders of California's latest immigrants. Today, 13 years after the political changeovers in Vietnam, Laos, and Cambodia brought the first Southeast Asian refugees to the United States, they are now emerging as significant players in the political arena.

"With each new immigrant wave, there is a time for political coming out; that time is now for the Southeast Asian refugees," noted California Senator Art Torres, a Democrat and chairman of the Joint Committee on Refugee Resettlement, International Migration and Cooperative Development.

"These are young, growing, and ambitious communities," added Torres, who recently returned from a trip to Vietnam to discuss resettlement issues. "Their political emergence is important, and along with Latino and other Asia-Pacific groups, they are going to be the driving force behind California's future."

Entering the Arena Of the estimated 800,000 Southeast Asians in the United States, about half have settled in California. While most are in the central and southern part of the state, about 120,000 live in the San Francisco Bay Area.

The successes of the California refugee leaders in their drive to play an active role in the American political process have been most apparent in the last few years.

Two years ago, a Cambodian leader ran for a seat on Long Beach's City council (see Refugee Reports, Vol. VII, No. 11). Nil Hul lost, but in the process came in fourth in a field of nine candidates. "He generated considerable support from other Asian communities," said his colleague Than Pok. "If he ran now, he'd get a lot more votes and would come very close to victory."

Last year in northern California, the successful mayoral campaign of former Democratic Assemblyman Art Agnos was a perfect vehicle to harness the emerging political energy of the refugees.

As an assemblyman, Agnos had worked closely with refugees, for many years helping them organize into effective mutual assistance associations. He also supported their efforts to gain government and private funding.

When he ran for mayor, the refugees remembered the time he had spent with them, and the lessons he had given them about lobbying in Sacramento's governmental corridors. During his mayoral campaign, the refugees rallied behind him as one of the earliest politicians who advocated for them.

Refugee leaders organized themselves and participated in the campaign efforts, distributing signs and campaign literature. They also hosted various events that added about $10,000 to the Agnos campaign funds. And they voted.

Chieu Pham, a Vietnamese leader and longtime Agnos supporter, said at the time of the campaign: "A successful candidate needs two basic things, money and votes. We intend to provide both."

Chieu Pham and his colleague Nguyen Nguyen spent weeks registering Vietnamese voters in the Tenderloin area of San Francisco, home to 15,000 Southeast Asian refugees.

The effort earned Nguyen Nguyen, executive director of the Mutual Assistance Association Council, an appointment to the Commission for Community Development in the Agnos Administration. He now helps to select community organizations to be awarded funding from a federal block grant of $18 million.

The task is particularly difficult where it concerns refugee groups. "The dilemma is that not enough refugee organizations have applied for the money," said Nguyen. "They don't know how, and no one has led them through the process."

The dilemma points to an ironic situation within the political growth process

among refugee groups. As seasoned leaders move themselves into politically active roles, their organizations suffer.

Bounchanh Thepkaysone, for four years an administrator of the Refugee Women's Program in San Franciso, now plays an "advisory role" to a local Lao refugee organization. "There are not enough Lao leaders," lamented Thepkaysone. "We don't have enough people who know what's going on, and who know how to work the system."

Indeed, unlike the more active Vietnamese, Laotians have not been as visible in the political arena. With 15,000 members in the San Francisco Bay area, the Laotian community only has about 1,000 who have become U.S. citizens.

"We are a smaller, less forceful community," said Chaosarn Chao, executive director of the Lao Family Community in Oakland, California. "Only last year, we started to talk to community members and encouraged them to become American citizens. This year, we've followed up with 1,000 flyers to community members, urging them to register to vote."

Chao said a lot of Laotian refugees are discouraged by the long delays at the Immigration and Naturalization Service. "Some of us have waited for two years (since applying for citizenship), but still haven't been called for an interview yet," he said.

**Many Cambodians Politically Inactive**

Many rank-and-file Cambodians are reluctant to get politically involved, according to Sophie Karet, who works with Cambodian refugees in San Francisco, Stockton and Modesto. Aside from Cambodian refugee leaders or those who staff social service organizations, Karet says "in general, Cambodians are not voting or participating." She attributes their passivity to the lingering effects of the brutal Khmer Rouge regime, combined with disillusionment with divisions within Cambodian factions fighting in Asia and depression over the continuous presence of Vietnamese troops in their homeland.

Other Cambodian leaders, meanwhile, seem to have had more successes. "A few years ago, people were just watching from the sidelines, but they are now more comfortable in participating in the American political process," said Than Pok, director of United Cambodian Community, a community-based agency in Long Beach, California.

"The majority of the community are following their leaders. They believe in us and support whatever we do," added Pok, who said he personally raised about $30,000 for the Dukakis presidential campaign.

More than half of the 180,000 Cambodian refugees in the U.S. live in California. Their recent entry into the business world has created a more comfortable and involved attitude toward American politics. "Cambodian business people are paying $50 to $500 per person for fundraising events these days," said Pok.

Such willingness to put out large amounts of money for fundraising events is an indication of the refugees' understanding of the political investment process. A Vietnamese refugee recently jokingly advised an audience at a Northern California college against "becoming politically active Vietnamese-Americans--it could make you very poor very fast."

**Money and Votes** San Jose, California reflects the most astounding change in refugee political attitudes. Long regarded as a base for conservative Vietnamese who reject participation in the American political process in favor of an anti-communist, anti-Hanoi focus, San Jose's Vietnamese population now boasts nearly 10,000 registered voters. (The Vietnamese community in San Jose is estimated to be 75,000 roughly 10 percent of the total population.)

"The switch in political focus is becoming clearer day by day," said Diem Ngo, director of the newly-formed Vietnamese Voters' Registration Project in San Jose. "More and more people are realizing that the spirit of militancy can no longer be focused on the dream of taking up arms against the Vietnamese regime."

Ngo added that political energy is now channeled "toward effective fights in Congress, to deal with issues involving the Hatfield Bill, the Refugee Reauthorization Act, or the repatriation of refugees now in Hong Kong."

So far this year, Ngo and his associates in San Jose have organized three non-partisan workshops to educate refugees about the issues confronting them in this election.

And this year, the community has begun to look beyond issues relating strictly to refugees. "We now look at ourselves as an

integral part of American society," said San Jose attorney Tiep Nguyen, who's been active with the local Republican structure. "Our concerns are not that different than that of the man next door--housing, education, taxes..."

Still, many close-to-home issues remain dominant. Both in northern and southern California, many campaigns have been organized to lobby the Reagan Administration and Congress for continued support for refugees, and to fight the possible repatriation of refugees to Vietnam and Laos from first-asylum countries in Southeast Asia.

Because of its more vocal anti-communist attitude, the Republican Party has always had a particular appeal, especially for the Vietnamese community. But over the years, as the refugees begin to focus more on their rights as a minority group within American society, they have found in the Democratic platform a more supportive and protective attitude. "Many of us have had a hard time deciding which party to support," said Nguyen.

This year, the dilemma has taken an added dimension. Most Vietnamese refugees have always opposed a rapprochement between Washington and Hanoi, concerned that relations between the two nations will only benefit the Hanoi communist leadership, and weaken their own legitimacy as refugees. But, said Diem Ngo, "the Vietnamese are now finding themselves having to oppose the Republican congressmen who, of late, have been advocating normalization of relations."

**Nurturing the Grassroots** Many refugee leaders admit privately that the overwhelming need for networking with other community groups and gaining access to legislators and government officials has required them to rush ahead with community causes and issues without adequate time to bring the community along.

The next big step, said Community Development Commissioner Nguyen, should be an "effort from the grassroots, to build support in the community."

American politicians are quite ready to court the potential votes of the three Indochinese communities. Just over a week before elections, Congresswoman Nancy Pelosi (D-CA.) heeded the call by refugee leaders in San Francisco to organize a hearing on conditions of refugees in camps in Asia.

Speaking after the hearings, California State Senator Milton Marks said, "We, as elected officials, must seek to educate ourselves concerning the needs of Southeast Asian refugees, in order that we may properly represent them in the state capital."

Whereas similar hearings in the past have been dominated by American social workers and officials speaking on behalf of refugees, Pelosi's was attended predominantly by Southeast Asian refugees.

The days of Vietnamese, Cambodian and Laotian elected officials may indeed not be very far away judging from the political successes so far.

"Our community has now begun to wake up to the realities and are taking a more active role," said Chieu Pham. "But the mainstreaming process will take some more time. We must continue to reach out to the community members, and coach them along."

## REFUGEE BACKLOG IN THE SOVIET UNION NEARS 10,000

As of the end of October, more than 9,500 people in Moscow have been granted exit visas by the Soviet Union but are waiting for an interview with the U.S. Embassy to determine their refugee status, government officials have told Refugee Reports. With 100 new applications coming in every day and only 4,000 numbers allocated to Moscow for all of FY 89, the United States already is facing substantial backlogs in Moscow less than two months into the fiscal year.

The backlog could grow to 30,000 in the next ten months, the official said. The regional admissions ceiling for the Soviet Union/Eastern Europe in FY 89 is 24,500, of which about 6,500 numbers have been informally allocated for Eastern European admissions, according to government sources. The rest goes for Soviet refugee resettlement, either directly from Moscow or from processing points in Europe.

About 80 percent of the applicants in Moscow are Armenians, with the remainder Jews and Christian Pentecostals.

The U.S. Embassy in Moscow has been informing applicants that processing of their cases may be delayed one year or more, the official confirmed. "Because of the restrictions on the number of people we can

accept," the letter said, "the U.S. Embassy cannot tell you exactly when you are going, or whether you are going at all." An English translation of the Russian original was provided to Refugee Reports by the Hebrew Immigrant Aid Society (HIAS), a New-York based resettlement agency.

"It is better for you not to submit any applications...for permission to leave the USSR," the letter also said, "while you have not received permission for entry to the USA." Such a policy, U.S. officials assert, would eliminate the current problem of people with exit permits being forced to give up their jobs and their homes and wait, possibly for up to two years, for U.S. approval to emigrate.

"More and more it is being asked," the Embassy letter concludes, "that Soviet citizens immigrating to the U.S. prove that they, with the help of their sponsors in the USA, can cover all financial responsibility for their trip, and that they can live there without financial help from the government."

There are now more than 650 Soviet Jews stranded in Moscow, according to HIAS, and the agency predicts an outflow of up to 30,000 Soviet Jewish refugees in FY 89.

HIAS has objected to several aspects of U.S. policy changes regarding refugees from the Soviet Union. First, agency officials argue, if the numbers are restricted, then they should be increased through emergency consultations with Congress, with supplemental funding provided as well. "U.S. refugee admissions policy is being driven by fiscal and not humanitarian considerations," a HIAS spokesman said. "Jews caught in this bureaucratic tangle are in jeopardy, given their experiences with Soviet anti-Semitism and in light of the fact that most of them have surrendered their apartments and jobs as a requirement for receiving exit permission."

HIAS also opposes U.S. government efforts to shift resettlement costs onto the Jewish community, by encouraging refugees and their sponsors to pay transportation and other admissions expenses. "These proposals ignore the fact that the Jewish community already allocates significant sums to the resettlement of Jewish refugees," the HIAS spokesman said, citing estimates by the Council of Jewish Federations that Jewish communities spent at least $14 million in FY 88 and will have spent $66 million in FY 89 on resettlement activities.

"Also given short shrift by these proposals," the statement continued, "is the concept of the public/private partnership in the resettlement of refugees. Refugee admissions are an expression of this nation's foreign policy goals and humanitarian commitments. They are not for sale to the highest bidder or to communities that can afford to pay for them."

HIAS found it "alarming" that several Jews in Moscow and approximately 85 in Rome have been rejected as refugees by the Immigration and Naturalization Service. "Jews from the Soviet Union fully meet the test of refugee status under U.S. and international law," the agency's spokesman said. "A sudden rash of denials of applications can only be interpreted as a cynical attempt to meet arbitrarily imposed budget limits and not as fair application of refugee law."

Despite the holdup on refugee processing in Moscow, Soviet Jews are still able to emigrate with Israeli visas to Vienna and Rome, where they are eligible to apply for U.S. and other third-country resettlement. A total of 2,473 Soviet Jews arrived in Vienna in October, according to the Intergovernmental Committee for Migration, the highest monthly total in nine years.

Representatives of the Armenian community in the United States appear less concerned about trends in U.S. policy on Soviet refugees. "We accept the fact that many, if not most, of the Soviet Armenians currently emigrating to the United States, may not qualify as refugees as mandated by the Refugee Act of 1980," said Ross Vartian, chairman of the Armenian Refugee Coordinating Committee.

"If the U.S. government wishes to receive large numbers of Soviet emigres, it should do so without subverting the basic law established to determine our government's assistance to refugees worldwide," Vartian told Refugee Reports. "Misuse of the Refugee Act ultimately is to the detriment of all the world's refugees, including that group of particular concern to us, the 10,000 to 15,000 Armeninian refugees awaiting a resolution to their plight in asylum countries in Europe and Asia."

Meanwhile, refugee interviewing remains on hold at the U.S. Embassy in Moscow. Given the existing backlogs, further interviewing "would not be useful," according to

an unclassified State Department cable obtained by Refugee Reports, "in advance of policy guidance from the Department regarding criteria for making determinations of refugee status for applications now on file, and the availability of additional programs for immigrants from the Soviet Union." Asked when such policy guidance might be available, a State Department official would only say, "Everyone is hedging their bets, at least until the election is over."

# Reader Exchange

° The Intergovernmental Committee for Migration (ICM) is conducting a survey of skilled and professional Afghans living and working in the United States and other countries of exile who may wish to return to Afghanistan and help in the reconstruction process there.

Information gathered from the survey will be used to develop a directory of Afghans who can be called upon by international and local agencies recruiting for reconstruction projects.

Afghans interested in participating in the survey may contact ICM at 440 National Press Building, Washington, DC 20045. (202) 662-7099. All individual questionnaire responses will be kept confidential.

° Organizations wishing to be included in the second edition of Directory of Services for Refugees and Immigrants should contact the Denali Press, P.O. Box 021535, Juneau, AK 99802-1535. (907) 586-6014.

° The National Association for Vietnamese American Education (NAVAE) will hold its Tenth Annual National Conference on Indochinese Education and Human Services on March 16-18, 1989 in Chicago, Illinois. NAVAE has issued a call for papers related to the main theme of the conference, which is "The New Generation of Indochinese Americans: Contributions, Conflicts, and Challenges. An abstract no longer than 100 words should be sent by January 15, 1989 to Ngoc Diep Nguyen, Illinois Resource Center, 1855 Mt. Prospect Road, Des Plaines, IL 60018.

For more information about the conference, please contact either of the following people: Khamchong Luangpraseut, President, NAVAE, Indochinese Program, Santa Ana Unified School District, 1405 French Street, Santa Ana, CA 92701. (714) 558-5729. Ngoan Le, NAVAE National Conference Chair, Vietnamese Association of Illinois, 4833 N. Broadway, 2nd Floor, Chicago, IL 60640. (312) 728-3700.

# Resources

**SALVADORAN DEATH SQUADS RESURGENT, AMNESTY INTERNATIONAL REPORTS**

*"Regarding the 'expert' testimony of Mr.-----, he is simply wrong in maintaining that the death squads of the early 1980s continue to operate today."*

So says a July 18, 1988 State Department advisory opinion for a Salvadoran asylum applicant recently received by Refugee Reports.

*"Amnesty International has been concerned over the past year at the escalation of torture, 'disappearances' and extrajudicial executions in El Salvador, carried out by uniformed and plainclothes 'death squads' (clandestine paramilitary groups). Killings by these squads are now the most alarming aspect of the human rights situation in the country."*

So says El Salvador: 'Death Squads'--A Government Strategy, an October 1988 report issued by Amnesty International.

Amnesty International tracks an alarming rise in death squad killings in 1988. Citing Tutela Legal, the human rights monitoring body of the Archdiocese of San Salvador, AI estimates that there had been roughly as many "death squad"-style "disappearances" and murders in the first three months of 1988 as in all of 1987.

Victims have included returned refugees and displaced persons, as well as trade unionists, members of cooperatives, human rights workers, members of the judiciary involved in efforts to establish criminal responsibility for human rights violations, and released political prisoners. Some of the killings and disappearances have been carried out by uniformed police and military units, others by unidentified gunmen in civilian clothes.

Among the returned refugees from

Honduras who have been "disappeared" or arrested and interrogated, sometimes under torture, about their experiences in exile, the report cites the case of Abel Dubon Castro, a 52-year-old shoemaker who returned from the Mesa Grande refugee camp. After being abducted on January 23, 1987 from his home in Ilopango, San Salvador department by men in plainclothes believed to be members of the security forces, he "disappeared" and hasn't been heard from since.

The 48-page report also finds that displaced persons and those who assist them have been the targets of "death squad"-style threats and murders. In June 1986, five church workers assisting the displaced received anonymous death threats. A sixth was arrested by the National Police and threatened with reprisals against his family if he did not reveal supposed connections between the armed opposition, the displaced, and church-run agencies that assist returned refugees and displaced persons. In November 1987, Miguel Angel del Transito Ortiz, a watchman at the convent of Carmelite Missionaries in Plan del Pino, San Salvador, was shot dead while on night duty. The attackers reportedly were attempting to force their way into the convent. The church had been the target of harassment because it was running a clinic for displaced persons, which the military termed a "clandestine clinic for the guerrillas."

In January 1988, one man was wounded when uniformed soldiers opened fire on displaced persons living in San Jose Calle Real, a church-run camp near San Salvador (see Refugee Reports, Vol. IX, No. 2). Foreign and Salvadoran relief workers in the camp were subsequently harassed and threatened with death if they did not stop their work, according to the Amnesty report.

The report is available for $5, plus $1.25 for handling, from AIUSA, National Office, Publications Department, 322 Eighth Ave., New York, NY 10001. (212) 807-8400.

## CENTRAL AMERICANS IN THE UNITED STATES

A U.S. Committee for Refugees publication, "The Back of the Hand: Bias and Restrictionism towards Central American Asylum Seekers in North America," presents an overview of developments since the Supreme Court's Cardoza-Fonseca decision, including the impact of the Immigration Reform and Control Act.

Another publication, "In the Shadow of Liberty: Central American Refugees in the United States," published by the American Friends Service Committee, surveys the treatment of Central Americans throughout the country, focusing especially on the border region.

"In the Shadow of Liberty" is available for $6 each, or $5 for 10 or more copies, plus a 20 percent postage charge. Make checks payable to "AFSC Peace Education Resources" and send to the AFSC, 1501 Cherry Street, Philadelphia, PA 19102.

"The Back of the Hand" is available for $3 from the U.S. Committee for Refugees, 1025 Vermont Ave., NW, Suite 920, Washington, DC 20005. (202) 347-3507.


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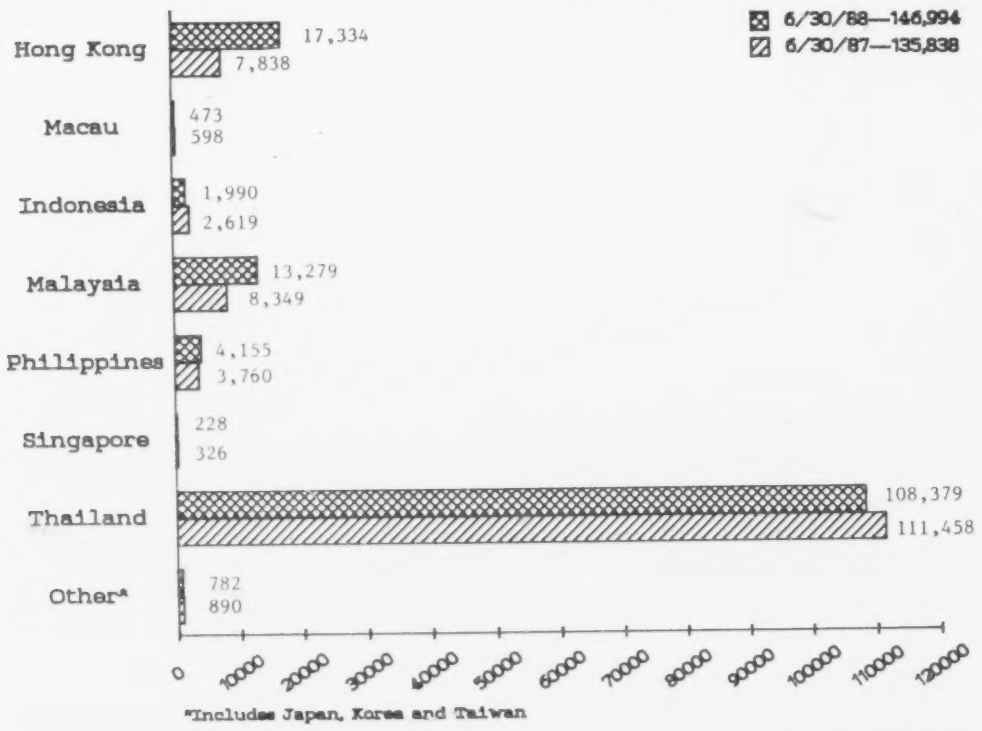


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